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AMENDED IN SENATE JUNE 12, 2000

AMENDED IN ASSEMBLY FEBRUARY 23, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1774

Introduced by Assembly Members ~~Lempert, Florez, and Rod Pacheco~~

(Principal coauthor: Senator Sher)

(Coauthors: ~~Assembly Members Alquist, Bock, Cardoza, Correa, Cox, Cunneen, Davis, Dutra, Honda, House, Keeley, Leach, Lowenthal, Machado, Maldonado, Margett, Mazzoni, Oller, Peseetti, Scott, Strom-Martin, Torlakson, Wiggins, and Zettel~~)

(Coauthors: ~~Senators Costa, Figueroa, Johannessen, Leslie, Monteith, Morrow, O'Connell, Peace, and Speier~~) **Member Lempert**

(Coauthors: *Assembly Members Alquist, Battin, Calderon, Cardoza, Correa, Cox, Cunneen, Davis, Dickerson, Dutra, Granlund, Hertzberg, Honda, Jackson, Longville, Lowenthal, Machado, Mazzoni, Nakano, Olberg, Robert Pacheco, Rod Pacheco, Pescetti, Romero, Scott, Shelley, Torlakson, Villaraigosa, Vincent, Washington, Wildman, and Zettel*)

(Coauthors: *Senators Alarcon, Alpert, Bowen, Chesbro, Dunn, McPherson, Murray, Rainey, Sher, and Soto*)

January 20, 2000

An act to amend Sections 17276 and 24416 of, ~~and to add Section 10754.2 to,~~ the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1774, as amended, Lempert. Personal income and bank and corporation taxes: deductions: net operating losses.

The Personal Income Tax Law and the Bank and Corporation Tax Law authorize a net operating loss deduction against the taxes imposed by those laws that generally permits those losses to be carried forward 5 taxable or income years, as specified, but provides that 50% of the entire amount of the net operating loss for any taxable or income year is not eligible for carryover to any subsequent taxable or income year, except as specified.

This bill would for each taxable or income year beginning on or after January 1, 2000, and before January 1, 2002, allow 55% of the entire amount of net operating loss to be carried forward, *and* for each taxable or income year beginning on or after January 1, 2002, ~~and before January 1, 2004,~~ would allow 60% of the entire amount of net operating loss to be carried forward, ~~and for each taxable or income year beginning on or after January 1, 2004, would allow 65% of the entire amount of the net operating loss to be carried forward.~~ This bill would also provide that a net operating loss attributable to any taxable or income year beginning on or after January 1, 2000, shall be a net operating loss to each of the 10 taxable or income years following the taxable or income year of the loss. ~~This bill would provide that the revenue loss resulting from the bill shall be excluded from certain calculations required under existing law for certain vehicle license fee offset amounts.~~

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 10754.2 is added to the Revenue~~
- 2 ~~and Taxation Code, to read:~~

~~10754.2. Notwithstanding any other law, any General Fund forecast of revenues used for purposes of paragraphs (2) to (15), inclusive, of subdivision (b) of Section 10754, shall not include any revenue loss due to the amendments to Sections 17276 and 24416 made by the act adding this section. Notwithstanding paragraph (4) of subdivision (c) of Section 10754, any revenue loss due to the amendments to Sections 17276 and 24416 made by the act adding this section shall not be used by the Department of Finance to modify the offsets set forth in paragraphs (2) to (15), inclusive, of subdivision (b) of Section 10754.~~

~~SEC. 2.—~~

SECTION 1. Section 17276 of the Revenue and Taxation Code is amended to read:

17276. Except as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, and 17276.6, the deduction provided by Section 172 of the Internal Revenue Code, relating to a net operating loss deduction, shall be modified as follows:

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

~~(D) Sixty-five percent for any taxable year beginning on or after January 1, 2004.~~ *after January 1, 2002.*

1 (2) In the case of a taxpayer who has a net operating
2 loss in any taxable year beginning on or after January 1,
3 1994, and who operates a new business during that taxable
4 year, each of the following shall apply to each loss
5 incurred during the first three taxable years of operating
6 the new business:

7 (A) If the net operating loss is equal to or less than the
8 net loss from the new business, 100 percent of the net
9 operating loss shall be carried forward as provided in
10 subdivision (d).

11 (B) If the net operating loss is greater than the net loss
12 from the new business, the net operating loss shall be
13 carried over as follows:

14 (i) With respect to an amount equal to the net loss
15 from the new business, 100 percent of that amount shall
16 be carried forward as provided in subdivision (d).

17 (ii) With respect to the portion of the net operating
18 loss which exceeds the net loss from the new business, the
19 applicable percentage of that amount shall be carried
20 forward as provided in subdivision (d).

21 (C) For purposes of Section 172(b)(2) of the Internal
22 Revenue Code, the amount described in clause (ii) of
23 subparagraph (B) shall be absorbed before the amount
24 described in clause (i) of subparagraph (B).

25 (3) In the case of a taxpayer who has a net operating
26 loss in any taxable year beginning on or after January 1,
27 1994, and who operates an eligible small business during
28 that taxable year, each of the following shall apply:

29 (A) If the net operating loss is equal to or less than the
30 net loss from the eligible small business, 100 percent of the
31 net operating loss shall be carried forward to the taxable
32 years specified in subdivision (d).

33 (B) If the net operating loss is greater than the net loss
34 from the eligible small business, the net operating loss
35 shall be carried over as follows:

36 (i) With respect to an amount equal to the net loss
37 from the eligible small business, 100 percent of that
38 amount shall be carried forward as specified in
39 subdivision (d).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of that paragraph, paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, the term “net loss” means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) Net operating loss carrybacks shall not be allowed.

(d) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute “five taxable years” in lieu of “20 taxable years,” except as otherwise provided in paragraphs (2) and (3).

(B) For a net operating loss for any taxable year beginning on or after January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating

1 to years to which net operating losses may be carried, is
2 modified to substitute “10 taxable years” in lieu of “20
3 taxable years.”

4 (2) For any taxable year beginning before January 1,
5 2000, in the case of a “new business,” the “five taxable
6 years” in paragraph (1) shall be modified to read as
7 follows:

8 (A) “Eight taxable years” for a net operating loss
9 attributable to the first taxable year of that new business.

10 (B) “Seven taxable years” for a net operating loss
11 attributable to the second taxable year of that new
12 business.

13 (C) “Six taxable years” for a net operating loss
14 attributable to the third taxable year of that new business.

15 (3) For any carryover of a net operating loss for which
16 a deduction is denied by Section 17276.3, the carryover
17 period specified in this subdivision shall be extended as
18 follows:

19 (A) By one year for a net operating loss attributable to
20 taxable years beginning in 1991.

21 (B) By two years for a net operating loss attributable
22 to taxable years beginning prior to January 1, 1991.

23 (4) The net operating loss attributable to taxable years
24 beginning on or after January 1, 1987, and before January
25 1, 1994, shall be a net operating loss carryover to each of
26 the 10 taxable years following the year of the loss if it is
27 incurred by a taxpayer that is under the jurisdiction of the
28 court in a Title 11 or similar case at any time during the
29 income year. The loss carryover provided in the
30 preceding sentence shall not apply to any loss incurred
31 after the date the taxpayer is no longer under the
32 jurisdiction of the court in a Title 11 or similar case.

33 (e) For purposes of this section:

34 (1) “Eligible small business” means any trade or
35 business that has gross receipts, less returns and
36 allowances, of less than one million dollars (\$1,000,000)
37 during the taxable year.

38 (2) Except as provided in subdivision (f), “new
39 business” means any trade or business activity that is first
40 commenced in this state on or after January 1, 1994.

1 (3) “Title 11 or similar case” shall have the same
2 meaning as in Section 368(a)(3) of the Internal Revenue
3 Code.

4 (4) In the case of any trade or business activity
5 conducted by a partnership or S corporation, paragraphs
6 (1) and (2) shall be applied to the partnership or S
7 corporation.

8 (f) For purposes of this section, in determining
9 whether a trade or business activity qualifies as a new
10 business under paragraph (2) of subdivision (e), the
11 following rules shall apply:

12 (1) In any case where a taxpayer purchases or
13 otherwise acquires all or any portion of the assets of an
14 existing trade or business (irrespective of the form of
15 entity) that is doing business in this state (within the
16 meaning of Section 23101), the trade or business
17 thereafter conducted by the taxpayer (or any related
18 person) shall not be treated as a new business if the
19 aggregate fair market value of the acquired assets
20 (including real, personal, tangible, and intangible
21 property) used by the taxpayer (or any related person)
22 in the conduct of its trade or business exceeds 20 percent
23 of the aggregate fair market value of the total assets of the
24 trade or business being conducted by the taxpayer (or
25 any related person). For purposes of this paragraph only,
26 the following rules shall apply:

27 (A) The determination of the relative fair market
28 values of the acquired assets and the total assets shall be
29 made as of the last day of the first taxable year in which
30 the taxpayer (or any related person) first uses any of the
31 acquired trade or business assets in its business activity.

32 (B) Any acquired assets that constituted property
33 described in Section 1221(1) of the Internal Revenue
34 Code in the hands of the transferor shall not be treated as
35 assets acquired from an existing trade or business, unless
36 those assets also constitute property described in Section
37 1221(1) of the Internal Revenue Code in the hands of the
38 acquiring taxpayer (or related person).

39 (2) In any case where a taxpayer (or any related
40 person) is engaged in one or more trade or business

1 activities in this state, or has been engaged in one or more
2 trade or business activities in this state within the
3 preceding 36 months (“prior trade or business activity”),
4 and thereafter commences an additional trade or
5 business activity in this state, the additional trade or
6 business activity shall only be treated as a new business if
7 the additional trade or business activity is classified under
8 a different division of the Standard Industrial
9 Classification (SIC) Manual published by the United
10 States Office of Management and Budget, 1987 edition,
11 than are any of the taxpayer’s (or any related person’s)
12 current or prior trade or business activities.

13 (3) In any case where a taxpayer, including all related
14 persons, is engaged in trade or business activities wholly
15 outside of this state and the taxpayer first commences
16 doing business in this state (within the meaning of Section
17 23101) after December 31, 1993 (other than by purchase
18 or other acquisition described in paragraph (1)), the
19 trade or business activity shall be treated as a new
20 business under paragraph (2) of subdivision (e).

21 (4) In any case where the legal form under which a
22 trade or business activity is being conducted is changed,
23 the change in form shall be disregarded and the
24 determination of whether the trade or business activity
25 is a new business shall be made by treating the taxpayer
26 as having purchased or otherwise acquired all or any
27 portion of the assets of an existing trade or business under
28 the rules of paragraph (1) of this subdivision.

29 (5) “Related person” shall mean any person that is
30 related to the taxpayer under either Section 267 or 318 of
31 the Internal Revenue Code.

32 (6) “Acquire” shall include any gift, inheritance,
33 transfer incident to divorce, or any other transfer,
34 whether or not for consideration.

35 (7) (A) For taxable years beginning on or after
36 January 1, 1997, the term “new business” shall include any
37 taxpayer that is engaged in biopharmaceutical activities
38 or other biotechnology activities that are described in
39 Codes 2833 to 2836, inclusive, of the Standard Industrial
40 Classification (SIC) Manual published by the United

1 States Office of Management and Budget, 1987 edition,
2 and as further amended, and that has not received
3 regulatory approval for any product from the United
4 States Food and Drug Administration.

5 (B) For purposes of this paragraph:

6 (i) “Biopharmaceutical activities” means those
7 activities which use organisms or materials derived from
8 organisms, and their cellular, subcellular, or molecular
9 components, in order to provide pharmaceutical
10 products for human or animal therapeutics and
11 diagnostics. Biopharmaceutical activities make use of
12 living organisms to make commercial products, as
13 opposed to pharmaceutical activities which make use of
14 chemical compounds to produce commercial products.

15 (ii) “Other biotechnology activities” means activities
16 consisting of the application of recombinant DNA
17 technology to produce commercial products, as well as
18 activities regarding pharmaceutical delivery systems
19 designed to provide a measure of control over the rate,
20 duration, and site of pharmaceutical delivery.

21 (g) In computing the modifications under Section
22 172(d)(2) of the Internal Revenue Code, relating to
23 capital gains and losses of taxpayers other than
24 corporations, the exclusion provided by Section 18152.5
25 shall not be allowed.

26 (h) Notwithstanding any provisions of this section, a
27 deduction shall be allowed to a “qualified taxpayer” as
28 provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, and
29 17276.6.

30 (i) The Franchise Tax Board may prescribe
31 appropriate regulations to carry out the purposes of this
32 section, including any regulations necessary to prevent
33 the avoidance of the purposes of this section through
34 splitups, shell corporations, partnerships, tiered
35 ownership structures, or otherwise.

36 (j) The Franchise Tax Board may reclassify any net
37 operating loss carryover determined under either
38 paragraph (2) or (3) of subdivision (b) as a net operating
39 loss carryover under paragraph (1) of subdivision (b)

1 upon a showing that the reclassification is necessary to
2 prevent evasion of the purposes of this section.

3 (k) Except as otherwise provided, the amendments
4 made by the act adding this subdivision shall apply to net
5 operating losses for taxable years beginning on or after
6 January 1, 2000.

7 ~~SEC. 3.—~~

8 SEC. 2. Section 24416 of the Revenue and Taxation
9 Code is amended to read:

10 24416. Except as provided in Section 24416.1, 24416.2,
11 24416.4, 24416.5, or 24416.6, a net operating loss deduction
12 shall be allowed in computing net income under Section
13 24341 and shall be determined in accordance with Section
14 172 of the Internal Revenue Code, except as otherwise
15 provided.

16 (a) (1) Net operating losses attributable to income
17 years beginning before January 1, 1987, shall not be
18 allowed.

19 (2) A net operating loss shall not be carried forward to
20 any income year beginning before January 1, 1987.

21 (b) (1) Except as provided in paragraphs (2) and (3),
22 the provisions of Section 172(b)(2) of the Internal
23 Revenue Code, relating to the amount of carryovers, shall
24 be modified so that the applicable percentage of the
25 entire amount of the net operating loss for any income
26 year shall be eligible for carryover to any subsequent
27 income year. For purposes of this subdivision, the
28 applicable percentage shall be:

29 (A) Fifty percent for any income year beginning
30 before January 1, 2000.

31 (B) Fifty-five percent for any income year beginning
32 on or after January 1, 2000, and before January 1, 2002.

33 (C) Sixty percent for any income year beginning on or
34 after January 1, 2002, and before January 1, 2004.

35 ~~(D) Sixty-five percent for any income year beginning~~
36 ~~on or after January 1, 2004. after January 1, 2002.~~

37 (2) In the case of a taxpayer who has a net operating
38 loss in any income year beginning on or after January 1,
39 1994, and who operates a new business during that
40 income year, each of the following shall apply to each loss

1 incurred during the first three income years of operating
2 the new business:

3 (A) If the net operating loss is equal to or less than the
4 net loss from the new business, 100 percent of the net
5 operating loss shall be carried forward as provided in
6 subdivision (e).

7 (B) If the net operating loss is greater than the net loss
8 from the new business, the net operating loss shall be
9 carried over as follows:

10 (i) With respect to an amount equal to the net loss
11 from the new business, 100 percent of that amount shall
12 be carried forward as provided in subdivision (e).

13 (ii) With respect to the portion of the net operating
14 loss that exceeds the net loss from the new business, the
15 applicable percentage of that amount shall be carried
16 forward as provided in subdivision (e).

17 (C) For purposes of Section 172(b)(2) of the Internal
18 Revenue Code, the amount described in clause (ii) of
19 subparagraph (B) shall be absorbed before the amount
20 described in clause (i) of subparagraph (B).

21 (3) In the case of a taxpayer who has a net operating
22 loss in any income year beginning on or after January 1,
23 1994, and who operates an eligible small business during
24 that income year, each of the following shall apply:

25 (A) If the net operating loss is equal to or less than the
26 net loss from the eligible small business, 100 percent of the
27 net operating loss shall be carried forward to the income
28 years specified in subdivision (e).

29 (B) If the net operating loss is greater than the net loss
30 from the eligible small business, the net operating loss
31 shall be carried over as follows:

32 (i) With respect to an amount equal to the net loss
33 from the eligible small business, 100 percent of that
34 amount shall be carried forward as specified in
35 subdivision (e).

36 (ii) With respect to that portion of the net operating
37 loss that exceeds the net loss from the eligible small
38 business, the applicable percentage of that amount shall
39 be carried forward as provided in subdivision (e).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in an income year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three income years of the new business.

(5) In the case of a taxpayer who has a net operating loss in an income year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of paragraph (2), paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, “net loss” means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) For any income year in which the taxpayer has in effect a water’s-edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that the net operating loss carryover was determined by taking into account the income and factors of an affiliated corporation in a combined report whose income and apportionment factors would not have been taken into account if a water’s-edge election under Section 25110 had been in effect for the income year in which the loss was incurred.

(d) Net operating loss carrybacks shall not be allowed.

(e) (1) (A) For a net operating loss for any income year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating

1 losses may be carried, is modified to substitute “five
2 income years” in lieu of “20 taxable years,” except as
3 otherwise provided in paragraphs (2), (3), and (4).

4 (B) For a net operating loss for any income year
5 beginning on or after January 1, 2000, Section
6 172(b)(1)(A)(ii) of the Internal Revenue Code, relating
7 to years to which net operating losses may be carried, is
8 modified to substitute “10 income years” in lieu of “20
9 taxable years.”

10 (2) For any income year beginning before January 1,
11 2000, in the case of a “new business,” the “five income
12 years” referred to in paragraph (1) shall be modified to
13 read as follows:

14 (A) “Eight income years” for a net operating loss
15 attributable to the first income year of that new business.

16 (B) “Seven income years” for a net operating loss
17 attributable to the second income year of that new
18 business.

19 (C) “Six income years” for a net operating loss
20 attributable to the third income year of that new business.

21 (3) For any carryover of a net operating loss for which
22 a deduction is denied by Section 24416.3, the carryover
23 period specified in this subdivision shall be extended as
24 follows:

25 (A) By one year for a net operating loss attributable to
26 income years beginning in 1991.

27 (B) By two years for a net operating loss attributable
28 to income years beginning prior to January 1, 1991.

29 (4) The net operating loss attributable to income years
30 beginning on or after January 1, 1987, and before January
31 1, 1994, shall be a net operating loss carryover to each of
32 the 10 income years following the year of the loss if it is
33 incurred by a corporation that was either of the following:

34 (A) Under the jurisdiction of the court in a Title 11 or
35 similar case at any time prior to January 1, 1994. The loss
36 carryover provided in the preceding sentence shall not
37 apply to any loss incurred in an income year after the
38 income year during which the corporation is no longer
39 under the jurisdiction of the court in a Title 11 or similar
40 case.

1 (B) In receipt of assets acquired in a transaction that
2 qualifies as a tax-free reorganization under Section
3 368(a)(1)(G) of the Internal Revenue Code.

4 (f) For purposes of this section:

5 (1) “Eligible small business” means any trade or
6 business that has gross receipts, less returns and
7 allowances, of less than one million dollars (\$1,000,000)
8 during the income year.

9 (2) Except as provided in subdivision (g), “new
10 business” means any trade or business activity that is first
11 commenced in this state on or after January 1, 1994.

12 (3) “Title 11 or similar case” shall have the same
13 meaning as in Section 368(a)(3) of the Internal Revenue
14 Code.

15 (4) In the case of any trade or business activity
16 conducted by a partnership or an S corporation,
17 paragraphs (1) and (2) shall be applied to the partnership
18 or S corporation.

19 (g) For purposes of this section, in determining
20 whether a trade or business activity qualifies as a new
21 business under paragraph (2) of subdivision (e), the
22 following rules shall apply:

23 (1) In any case where a taxpayer purchases or
24 otherwise acquires all or any portion of the assets of an
25 existing trade or business (irrespective of the form of
26 entity) that is doing business in this state (within the
27 meaning of Section 23101), the trade or business
28 thereafter conducted by the taxpayer (or any related
29 person) shall not be treated as a new business if the
30 aggregate fair market value of the acquired assets
31 (including real, personal, tangible, and intangible
32 property) used by the taxpayer (or any related person)
33 in the conduct of its trade or business exceeds 20 percent
34 of the aggregate fair market value of the total assets of the
35 trade or business being conducted by the taxpayer (or
36 any related person). For purposes of this paragraph only,
37 the following rules shall apply:

38 (A) The determination of the relative fair market
39 values of the acquired assets and the total assets shall be
40 made as of the last day of the first income year in which

1 the taxpayer (or any related person) first uses any of the
2 acquired trade or business assets in its business activity.

3 (B) Any acquired assets that constituted property
4 described in Section 1221(1) of the Internal Revenue
5 Code in the hands of the transferor shall not be treated as
6 assets acquired from an existing trade or business, unless
7 those assets also constitute property described in Section
8 1221(1) of the Internal Revenue Code in the hands of the
9 acquiring taxpayer (or related person).

10 (2) In any case where a taxpayer (or any related
11 person) is engaged in one or more trade or business
12 activities in this state, or has been engaged in one or more
13 trade or business activities in this state within the
14 preceding 36 months (“prior trade or business activity”),
15 and thereafter commences an additional trade or
16 business activity in this state, the additional trade or
17 business activity shall only be treated as a new business if
18 the additional trade or business activity is classified under
19 a different division of the Standard Industrial
20 Classification (SIC) Manual published by the United
21 States Office of Management and Budget, 1987 edition,
22 than are any of the taxpayer’s (or any related person’s)
23 current or prior trade or business activities.

24 (3) In any case where a taxpayer, including all related
25 persons, is engaged in trade or business activities wholly
26 outside of this state and the taxpayer first commences
27 doing business in this state (within the meaning of Section
28 23101) after December 31, 1993 (other than by purchase
29 or other acquisition described in paragraph (1)), the
30 trade or business activity shall be treated as a new
31 business under paragraph (2) of subdivision (e).

32 (4) In any case where the legal form under which a
33 trade or business activity is being conducted is changed,
34 the change in form shall be disregarded and the
35 determination of whether the trade or business activity
36 is a new business shall be made by treating the taxpayer
37 as having purchased or otherwise acquired all or any
38 portion of the assets of an existing trade or business under
39 the rules of paragraph (1) of this subdivision.

(5) “Related person” shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) “Acquire” shall include any transfer, whether or not for consideration.

(7) (A) For income years beginning on or after January 1, 1997, the term “new business” shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) “Biopharmaceutical activities” means those activities which use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(ii) “Other biotechnology activities” means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(h) For purposes of corporations whose net income is determined under Chapter 17 (commencing with Section 25101), Section 25108 shall apply to each of the following:

(1) The amount of net operating loss incurred in any income year which may be carried forward to another income year.

(2) The amount of any loss carry forward which may be deducted in any income year.

1 (i) The provisions of Section 172(b)(1)(D) of the
2 Internal Revenue Code, relating to bad debt losses of
3 commercial banks, shall not be applicable.

4 (j) The Franchise Tax Board may prescribe
5 appropriate regulations to carry out the purposes of this
6 section, including any regulations necessary to prevent
7 the avoidance of the purposes of this section through
8 splitups, shell corporations, partnerships, tiered
9 ownership structures, or otherwise.

10 (k) The Franchise Tax Board may reclassify any net
11 operating loss carryover determined under either
12 paragraph (2) or (3) of subdivision (b) as a net operating
13 loss carryover under paragraph (1) of subdivision (b)
14 upon a showing that the reclassification is necessary to
15 prevent evasion of the purposes of this section.

16 (l) Except as otherwise provided, the amendments
17 made by the act adding this subdivision shall apply to net
18 operating losses for income years beginning on or after
19 January 1, 2000.

20 ~~SEC. 4.—~~

21 *SEC. 3.* This act provides for a tax levy within the
22 meaning of Article IV of the Constitution and shall go into
23 immediate effect.